

Cover Page for May 5, 2021 Planning Board Meeting and Workshop

	Material Issued 04/29/2021	Issued on _____
ITEMS		
Cover page with date	✓	
May 5, 2021 meeting agenda	✓	
April 7, 2021 Minutes for approval	✓	
April 7, 2021 Workshop notes	✓	
April 21, 2021 Workshop notes	✓	
Completeness Review for SP-2021-02 Oceanside KOA Application Staff Report	✓	
Completeness Review for PUD-2021-01 — Jones Marsh Affordable Housing Development Application Staff Report	✓	
Solar Photovoltaic (PV) system – land use amendment report and proposed draft LUO amendment order	✓	
Accessory (Bonus) Dwelling Units LUO amendment report	✓	
Update on proposed Signage LUO amendment	N/A	
Discussion on rooftop parking (possible LUO amendment)	N/A	

**Meeting Agenda
Bar Harbor Planning Board
Wednesday, May 5, 2021 at 4:00 PM**

**IMPORTANT NOTICE:
THIS MEETING WILL BE HELD REMOTELY**

1. As the town and/or the state declaration(s) of emergency due to COVID-19 remain in effect, the meeting will be held remotely via the online video meeting platform Zoom, instead of in person at the Municipal Building.
 2. This meeting will be broadcast live on **Spectrum channel 7 (in Bar Harbor)** and streamed online at https://townhallstreams.com/towns/bar_harbor_me. It will also be archived on the website for later viewing after the meeting.
 3. Members of the public are welcome to take part in the meeting via the Zoom webinar. The webinar can be accessed and joined by going to the website <https://zoom.us> and clicking the "Join a Meeting" button. When prompted, enter the **meeting ID (878 1085 8037)** followed by the **passcode (646137)**. You will be prompted to enter your name and email address. To join by phone, dial (301) 715-8592 and enter the numbers listed above when prompted. The webinar can also be accessed and joined by clicking on this direct link:
<https://us02web.zoom.us/j/87810858037?pwd=d3VqK0hqRFIkSWVseTFLWUltNEVSOT09>
 4. Following standard Planning Board practice, speakers will be asked to identify themselves at the beginning of their comments and limit themselves to three minutes.
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I. CALL TO ORDER

II. ADOPTION OF THE AGENDA

III. EXCUSED ABSENCES

IV. PUBLIC COMMENT PERIOD

The Planning Board allows up to 15 minutes of public comment on any subject not on the agenda and not a pending application before the board, with a maximum of three minutes per person.

V. APPROVAL OF MINUTES

- a. April 7, 2021

VI. REGULAR BUSINESS

a. Completeness Review for SP-2021-02 Oceanside KOA

Project Location: Tax Map 211, Lot 1 off of the County Road and encompassing 2.63 acres of land, according to town tax records. The subject land is in the Town Hill Residential Corridor, Town Hill Residential and Stream Protection zoning districts.

Owners/Applicants: The owner of the property is Kampgrounds of America, Inc. (550 N. 31st Street, Suite 400, Billings, MT 59101) and the applicant is Bar Harbor Oceanside KOA (136 County Road, Bar Harbor, ME 04609).

Application: The construction of nine worker campsites. This will improve campground operations and worker privacy. Worker sites will be relocated from the existing campground area (Tax Map 211, Lot 3, 104 County Road, in Bar Harbor) to this property.

b. Completeness Review for PUD-2021-01 — Jones Marsh Affordable Housing Development

Project Location: Tax Map 212, Lot 43-1 off of State Route 3 and encompassing a total of 30 acres according to town tax records. The subject land is the Town Hill Residential and Town Hill Rural districts.

Applicant/Owner: Island Housing Trust

Application: The applicant proposes to subdivide a 30-acre property into nine lots (eight lots buildable for residential use and one lot reserved for open space). Six of the buildable lots would have single-family homes and two of the buildable lots would have two-family homes, for a total of ten dwelling units.

VII. OTHER BUSINESS

- a. Discussion on proposed Solar Photovoltaic (PV) system LUO amendment**
- b. Discussion on proposed Accessory Dwelling Units LUO amendment**
- c. Update on proposed Signage LUO amendment**
- d. Discussion on rooftop parking (possible LUO amendment)**

VIII. BOARD MEMBER COMMENTS AND SUGGESTIONS FOR THE NEXT AGENDA

IX. REVIEW OF PENDING PLANNING BOARD PROJECTS

X. ADJOURNMENT

**Minutes
Bar Harbor Planning Board
Wednesday, April 7, 2021 at 4:00 PM**

The meeting was held via the Zoom online meeting platform, and was broadcast live on Spectrum channel 7 in Bar Harbor as well as online via Town Hall Streams (where it is also archived). The meeting was held remotely, as provided for under state law, due to the ongoing COVID-19 pandemic

I. CALL TO ORDER

Chairman Tom St. Germain called the meeting to order at 4:04 PM. Planning Board members present were Chairman St. Germain, Vice-chair Joe Cough, Secretary Erica Brooks and Member Basil Eleftheriou Jr. Member Millard Dority was absent.

Town staff members present were Planning Director Michele Gagnon, Code Enforcement Officer Angela Chamberlain, Deputy Code Enforcement Officer Mike Gurtler and Assistant Planner Steve Fuller.

Paul Weathersby was also present.

II. ADOPTION OF THE AGENDA

Vice-chair Cough asked a clarifying question about agenda item VII relating to signage. Assistant Planner Fuller explained that staff was not looking for a motion on the item but wanted to update the board and get feedback.

Vice-chair Cough moved to adopt the agenda. Secretary Brooks seconded. The motion then carried unanimously (4-0), on a roll-call vote.

III. EXCUSED ABSENCES

Vice-chair Cough moved to excuse Mr. Dority from attendance. Mr. Eleftheriou seconded. The motion carried unanimously (4-0), on a roll-call vote.

IV. PUBLIC COMMENT PERIOD

At 4:07 PM, Chair St. Germain opened the meeting for public comment. He invited those people, in particular, in the (digital/online) waiting room looking to speak on the solar ordinance item (scheduled for board discussion during the workshop after the meeting).

Ken Colburn, a board member with A Climate to Thrive, was present to speak. He thanked the board for considering the proposed solar photovoltaic systems ordinance, and said the issue is a climate as well as an economic one, he said. Solar will help reduce the \$26 million Bar Harbor spends on energy, said Mr. Colburn. Solar is vital for energy resilience, he said, as it can be up and running as soon as storm clouds clear, even if the

rest of the grid is still down. Mr. Colburn also noted that A Climate to Thrive recently submitted a grant for \$7 million to the Department of Energy to possibly develop a microgrid on the island.

Solar developers will only go where they're welcome, said Mr. Colburn, and where there exists certainty. This ordinance provides that, he said — certainly compared to the uncertainty that exists in the policy vacuum on this topic. Chair St. Germain asked if Mr. Colburn would forward that information to the board and Mr. Colburn said he would.

Margaret Jeffrey, also a board member with A Climate to Thrive, was present to speak. The policy decisions adopted by the town, where she has lived for years, mean a good deal to her, said Ms. Jeffreys. She thanked the board for putting together the proposed ordinance language and said the change is essential as the town takes steps toward compliance with the Bar Harbor Emergency Declaration Resolution on climate change and the goals of the Maine Climate Council. It will also give the town the ability to generate its own energy, said Ms. Jeffrey.

Hearing no other residents wishing to speak, Chair St. Germain closed the public comment period at 4:14 PM.

V. APPROVAL OF MINUTES

- a. February 3, 2021
- b. March 3, 2021

Secretary Brooks moved to approve minutes from February 3, 2021 and March 3, 2021 as written. Mr. Eleftheriou seconded the motion, which then carried unanimously (4-0), on a roll-call vote.

VI. REGULAR BUSINESS

- a. **Request for 6-month extension to commence activities for SP-2020-04 — The Crossing at Town Hill**

Project Location: 1338 State Highway 102; Tax Map 227, Lot 16, totaling 2.0± acres of land in the Town Hill Business zoning district.

Owners/Applicants: Paul and Jane Weathersby

Application: To develop a single, new structure containing eight TA-2 units and to additionally convert two dwelling units in a separate, existing building on the property ("the Barn") into two TA-2 units. The total number of TA-2 units on the property would be 10.

Paul Weathersby was present. Chair St. Germain explained the project had been approved but the applicant had asked for an extension. He asked Mr. Weathersby why he is requesting an extension. Chair St. Germain noted contractors are very busy at the moment.

Mr. Weathersby said that was exactly the reason, and said he is expecting to get the appraisal within a few weeks. There's an outside chance there will be financing approval

within a month, he said, but that's likely not realistic so he was asking for six months to finalize the financing.

Chair St. Germain asked if the recent extension granted to the computer company (Coastal Computers) was also six months. It was, said Assistant Planner Fuller.

Vice-chair Cough moved to grant a six-month extension to commence activities for SP-2020-04 — The Crossing at Town Hill from April 28, 2021 to October 28, 2021 for the Planning Board decision dated October 28, 2020. Mr. Eleftheriou seconded the motion, which then carried unanimously (4-0), on a roll-call vote.

VII. OTHER BUSINESS

a. Update on proposed Signage LUO amendment

Assistant Planner Fuller updated the board on the signage amendment that had gone through the Land Use Ordinance amendment process. The goal had been to update sections of the ordinance relating to signage and lighting. During the Warrant Committee review process a question was raised about neon signs and where they were allowed.

A larger issue, he said, as the issue moved to the full Warrant Committee, was that members had concerns about neon signage in general. The full Warrant Committee voted "ought not to pass" on the amendment 12 to 5, said Assistant Planner Fuller.

Assistant Planner Fuller said staff wanted to go back, with the Design Review Board, and examine the section relating to neon, factoring in feedback from the Warrant Committee, and to then bring it to the Planning Board at the regularly scheduled meeting in May.

"We're working toward getting this back on the November ballot," said Assistant Planner Fuller, which would require the Planning Board to call for a public hearing at its meeting in June and schedule the hearing for July 7, 2021. Vice-chair Cough asked for a review of the timeline, which Assistant Planner Fuller provided.

Vice-chair Cough said he did not like calling for a public hearing and changing the document midstream. Assistant Planner Fuller said that even if there was not a vote, staff would like feedback from the board at its meeting on May 5, 2021.

Mr. Eleftheriou asked what the specific concern was regarding the neon signs.

Assistant Planner Fuller read the existing language from §125 - 67 B. (3)(f). He explained that the amendment that was proposed spelled out the specific kind of accommodations referenced and would have removed language regarding business and corridor districts. The thinking was, said Assistant Planner Fuller, that similar establishments outside of those districts should have the same opportunity for that kind of sign.

There was concern at the Warrant Committee about neon signs being allowed in residential districts where certain transient accommodation uses are allowed, said

Assistant Planner Fuller. "People have strong feelings about neon," he said, and some wondered whether that type of sign should be allowed at all (anywhere in town).

Mr. Eleftheriou was amazed that it made it as far as it did without public input on that point. He said it was unfortunate it couldn't have been aired in a public hearing.

Assistant Planner Fuller said yes, there had been public hearings at both Planning Board and Town Council meetings, but that this is the way the process unfolds. He said staff did not want to go forward with the amendment as written with the negative vote from the Warrant Committee.

The Design Review Board is set to discuss the issue on April 8, 2021, said Assistant Planner Fuller, in response to a question from Chair St. Germain. That is the first chance Design Review Board members will have to discuss the issue.

VIII. BOARD MEMBER COMMENTS AND SUGGESTIONS FOR THE NEXT AGENDA

Vice-chair Cough felt it was time to move the accessory dwelling unit (ADU) discussion to regular meetings. "I hate to drag this out any further if we're ready for prime time," he said. "I'd like to see the ADU on the next agenda."

Secretary Brooks agreed. Vice-chair Cough asked if the board would be doing a workshop in two weeks. Chair St. Germain said the board could play it by ear if they didn't get through enough during the workshop following the meeting this evening.

Mr. Eleftheriou commented briefly on the proposed solar regulations. He said the board had been working on this since last fall. The Planning Department has put a lot of work into this, he said, and it doesn't require much input from the board. The hope is to have this on the official agenda next time, said Mr. Eleftheriou. "I hope that we can just kind of move forward with it."

IX. REVIEW OF PENDING PLANNING BOARD PROJECTS

- a. SD-2021-01 — Harbor Lights
- b. PUD-2021-01 — Jones Marsh

There have been self-guided site visits and virtual neighborhood meetings for both projects, said Assistant Planner Fuller. The ball is now in the applicants' respective courts, he said. Planning Director Gagnon said that Oceanside KOA is possibly looking to come back to the board for approval of nine worker campsites.

X. ADJOURNMENT

At 4:36 PM, Vice-chair Cough moved to adjourn. Mr. Eleftheriou seconded and the motion carried unanimously (4-0), on a roll-call vote.

**Workshop Notes
Bar Harbor Planning Board
Wednesday, April 7, 2021
(immediately following end of 4 PM meeting — also held via Zoom webinar)**

I. Vacation rentals (update on proposed Chapter 174 and discussion on Chapter 125, Land Use Ordinance possible amendments)

Planning Director Gagnon presented the proposed amendments to Chapters 125 and 174 (the latter presently known as Chapter 190). She explained that with regard to amending Chapter 125, one of the paths is for the Town Council to propose an amendment. She said that is the case with this proposed amendment. She explained the primary proposed change to Chapter 125 is focused solely on presenting two new uses, Vacation Rental-1 (VR-1) and Vacation Rental-2 (VR-2). As written, neither of the definitions for those proposed uses mentions caps.

There is a two-night minimum rental for VR-1 and a four-night minimum for VR-2, said Planning Director Gagnon. The amendment also updates where those uses are allowed. Staff have also moved VR out of the list of uses stated as needing a building permit by the Code Enforcement Officer (CEO). VR does not need a building permit, explained Planning Director Gagnon. A dwelling unit needs a building permit but a VR does not, as it is a use allowed in a dwelling unit, she said. As proposed, it would now need a permit from the Code Enforcement Officer as an allowed activity.

What is currently known as Chapter 190 would become Chapter 174, she continued, requiring the repeal of Chapter 190 and the enactment of a new chapter, Chapter 174 (rather than repeal and replace). This is due to the numbering system in place for municipal ordinances.

Under the proposal, Chapter 125 of the Bar Harbor Land Use Ordinance (LUO) includes the districts where VRS-1 and 2 are allowed and related definitions, while Chapter 174 Short-Term Rental, includes the maximum number of registrations allowed for each type of rental, the transition mechanics for this proposed new system and continuance of registration.

The only thing neither of these chapters addresses at this time is the transferability of VRs, said Planning Director Gagnon. The Bar Harbor Town Council had directed staff to do a poll in June at the municipal election, she continued, but that is after the date at which the Planning Board would need to call for a public hearing and therefore would not work timewise. Staff has decided to use Polco, a polling software, to put the question to the public in the near future. Once staff has an idea of what residents want to do they (staff) will report that back.

Planning Director Gagnon noted that the explanatory text boxes included in the proposed language for Chapter 174 aren't technically part of the ordinance but are intended to be used as an aid for readers.

Mr. Eleftheriou asked why the terms "vacation rental" and "short-term rental" were both still in use in the proposed amendments, rather than using just one term.

Planning Director Gagnon explained that the Town Council wanted two draft orders on Chapter 125, one addressing the present amendment and one addressing transferability, which created a situation in which, if one amendment passed and the other did not, language would be inconsistent. Staff plans to streamline language once something passes, said Planning Director Gagnon.

Vice-chair Cough said that having language regarding transferability in Chapter 174 would be a “terrible way” for a land use ordinance to operate. To prohibit transferability would be a disservice to anyone currently operating their property as a short-term rental adding that transferability should not be left up to a particular Council year-to-year.

Secretary Brooks agreed. She further explained that she was frustrated as the Council did not seem to want to hear any of the Planning Board’s feedback, specifically about transferability. She said that the results of Polco will be interesting but was unsure how that would “truly shape this how it needs” to be.

She felt that the draft order did not accomplish the original policies and objectives put out years ago, and was not sure if it was fully legal, including the removal of VR-2s from a number of zones. The transferability piece is key, she said. She said that without knowing what is going on with transferability, it is going to be very hard to move forward with the draft.

Vice-chair Cough said the logic of a dwelling unit and allowed use could be applied to a commercial building downtown; for instance, if one were to build a hotel, an occupancy permit would then be required to operate it. The LUO protects the use, he said. “I hate to bring this up, said Vice-chair Cough, “but we don’t have control over [Chapter] 174,” which is the domain of the Town Council. “We can only try to apply the LUO where we think it’s appropriate,” he said. He felt the Town Council did not want the board to comment on Chapter 174.

Chair St. Germain asked if Chapter 174 is entirely new. Planning Director Gagnon explained that it’s the new Chapter 190. When 174 comes into effect, it would replace 190, she said, with the idea being that the Town Council would adopt it prior to the November vote, contingent upon the amendments to Chapter 125 passing.

Chair St. Germain shared Secretary Brooks and Vice-chair Cough’s concerns. The board has expressed opposition to a prohibition on transferability on a recurring basis, he said, which the Town Council has repeatedly removed and placed under its control, he said, expecting the Planning Board to support the rest. Chair St. Germain said he’s interested in seeing what the results of Polco will be, but, as it stands, this is something he would have difficulty supporting without transferability.

Chair St. Germain brought up the rapid increase in housing prices. “What was a \$400,000 house a year ago is now a \$500,000 house, or more,” he said, indicating that affordability is a “moving target.” He felt that VRs and affordable housing were loosely related 13 months ago, but aren’t related at all anymore. It’s a financial limitation that people would be supporting, should they support it, said Chair St. Germain. “We didn’t support it in the first place, the market has

changed and I'm not sure this is the way to promote affordable housing by regulating something that is, in all likelihood, not related to affordable housing at this point."

Mr. Eleftheriou had reservations about having Polco guide the question. "I'm not sure it will provide an accurate snapshot of what's going on and can be skewed in a lot of ways," he said. He felt that transferability "belongs in land use and should remain there," but "this is where we're at." Town Council, he said, is looking to approve the VRs 1 and 2 and trust that Chapter 174 will get taken care of, he said. He felt it was wrong for those who have made investments in a property to not be able to transfer that property. Mr. Eleftheriou asked who would hold the registration. It would be the property owner, said CEO Chamberlain, because "it matters where you live."

Mr. Eleftheriou suggested strengthening language under Chapter 174, §174-5 E. to make clear that there will be no issuance of a registration if any property taxes and/or town water and sewer fees are in arrears. The way it is currently written, he said, presently the possibility "for someone to argue about that." Mr. Eleftheriou suggested that, under Chapter 174, §174-5 F, staff add that if there are any changes to the short-term rental in question, such as the addition of a bedroom or other modification, that staff be notified in writing. He said that "transferability is a big issue" and that he wasn't sure he could support the changes with that issue addressed solely in 174.

Deputy CEO Gurtler whether the board felt the value of a property was raised when being registered/used as a VR. Secretary Brooks said that depends on a lot of things, and that the question is a "loaded" one. Planning Director Gagnon said the ability to be a VR does increase the value of a property. Secretary Brooks said it might, but technically that depends on lots of things, such as the zone a property is in, whether a property owner is renting a room or an entire house, the location, etc.

Vice-chair Cough felt the ability to be a VR increases the value of a property. If an owner buys a house for \$500,000, he said, and is able to generate income out of it, the house could still sell for \$500,000 in a slower market because it is an income-producing property. If a property owner can't establish that that revenue stream can be continued, the value of the house could certainly go down.

Mr. Eleftheriou said the value of a property depends in part on when it was purchased, and that the continuance of operation as an income-producing property could have been factored into someone getting a loan for that property. This is a use that is allowed right now, he said, and has been allowed. "So, I consider it grandfathering. You can't take something away that's been part of the system for an indefinite period of time," he said. "That's changing the rules."

Secretary Brooks said an increase in price may not be driven solely by the ability to generate revenue. Those who rent their houses, she said, often fix them up, improve the property and create a higher assessed value. Planning Director Gagnon said she didn't want to get too far into the discussion but that staff often see properties being purchased by those who have the income and ability to fix them then being rented as short-term rentals. There is a demonstrated relationship that the more VRs you have, the value goes up, and people are evicted from their rental because it's being changed to a short-term rental, she said.

The proposed amendments are not a “fix all,” said Planning Director Gagnon, but when there are too many VR-2s, the market becomes unbalanced. If the goal of the municipality is to have a year-round economy then actions need to be taken, she said. If the goal is to have a tourism-driven economy, different actions may be necessary. But this is what is in front of the board, she said.

Planning Director Gagnon said she understood the board’s reservations about Polco but that the election results have trended the same way as poll results with the exception of one instance and seems to have some credence.

Vice-chair Cough felt that VR-2s belong in commercial zones “without restriction” as long as other standards are upheld, which he said would be an opportunity for those zones to have “long-term viability.”

Chair St. Germain asked if Planning Director Gagnon had enough information to report back to the Town Council. Planning Director Gagnon thanked board members for their work and said that this is hard and has been draining and she appreciated their work.

Mr. Eleftheriou asked how many VR applications are pending. About 60, said Code Enforcement Officer Chamberlain. Member Eleftheriou asked how many are VR-1 versus VR-2; CEO Chamberlain said she wasn’t sure because the department does not track that now (as the definitions don’t exist). There are close to 500 short-term rentals currently permitted, she said.

Deputy Code Enforcement Officer Gurtler said staff are now able to get to inspections within roughly a week of application. The pending applications have typically failed their initial inspection, he said. Roughly 99 percent of applicants fail the inspection the first time, he said.

II. Proposed LUO amendment (solar regulations)

Mr. Eleftheriou gave an overview of the proposed solar ordinance. The goal of this, he said, is to address what’s missing in the LUO. Beyond installations for individual homes, staff typically don’t have inquiries into small or medium arrays. He said developers are looking to put in larger arrays on multiple acres, as smaller arrays do not hold up to a cost-benefit analysis.

The arrays would be subject to major site plan review, including licensing, financial, security, lighting, noise impacts and hazardous waste requirements, among others, explained Mr. Eleftheriou, and would require a decommissioning plan. With land being the commodity that it is in Bar Harbor, he said, “I don’t know how much of this will come to fruition,” but it is an important part of the LUO and should be incorporated moving forward.

Planning Director Gagnon thanked Mr. Eleftheriou for his summary. She noted CEO Chamberlain has permitted solar panels as an accessory use and will continue to do so, such as panels on roofs. There’s no threshold on that. Having panels on roofs is not more or less unsightly than not having them, she said. They will also continue to be allowed to be ground-mounted as an accessory use, until the total surface of the panels exceeds 20,000 square feet.

"That has enough of a visual impact that people could be concerned and you're stepping into a community system," said Planning Director Gagnon, defining a community system as between 1 and 5 megawatts (MW). One MW of panels, she said, requires roughly 5 to 10 acres of land.

As written, arrays with a total surface area less than 20,000 square feet would not be subject to lot coverage requirements, explained Planning Director Gagnon, while those exceeding 20,000 square feet would be considered principal use and subject to lot coverage requirements. Lot coverage is the key to making this doable, she said.

Proposed principal use arrays would require major site plan review and be subject to everything a site plan is subject to, said Planning Director Gagnon, and all the performance standards. In addition, staff are proposing a series of additional submissions under §125-69 focusing on the visual impact assessment and a decommissioning plan, to ensure there will be money to restore the land to its original resource-based use. Fencing and screening are also addressed, she said.

Planning Director Gagnon noted that the document is not yet in draft order format. Once the board feels comfortable with the language, the next step is to present it as a draft amendment.

Chair St. Germain asked if other alternative forms of power fall under lot coverage requirements. Planning Director Gagnon said staff are currently focused solely on ground-mounted solar photovoltaic systems, because technology is changing rapidly. That is the reason the proposed language focuses on surface area, rather than MW, she said. People aren't worried about how much electricity it's generating but instead how it will look, she said. This isn't an industrial use, she added. It's quite different. She noted that the panels are not "shiny mirrors" and are meant to absorb the sun, not reflect it.

Chair St. Germain asked if any other primary use could be located there if lot coverage is exceeded. Planning Director Gagnon said the only thing that would be exempt from the lot coverage are the panels themselves. Everything else — an access road, inverters, anything that creates imperviousness would be subject to lot coverage, she said, would be subject to that.

Vice-chair Cough asked if that would create an accessory use for the solar array. Planning Director Gagnon said two primary uses would be allowed on a lot, with the idea that a raised photovoltaic panel where vegetation is managed underneath doesn't create the same impervious area that another use would. Any other impervious or other primary uses on that lot will be subject to lot coverage requirements.

In response to a question from Vice-chair Cough, Planning Director Gagnon explained that if a homeowner wanted to have an array less than 20,000 square feet, it would be considered an accessory use. An array with a surface array exceeding 20,000 square feet would be considered a primary use.

Vice-chair Cough asked whether a report generated in response to a visit by the Town Council to a property in Salsbury Cove was yet available. He said that the town paid \$2,000 for that report,

which he would like to see before moving forward. He said he is not against the proposed ordinance but would rather not go back and redo it in light of more information.

Planning Director Gagnon said the report has not yet been received but that staff research indicates that "it's all about 1 to 5 MW." The Town Council has asked for this ordinance to be done, she added.

Mr. Eleftheriou said the study the Council asked for is probably very similar to what any group does when they're going to construct a solar array. It also matters how far away a proposed array is from a substation, he said. This ordinance follows a lot of the same guidelines other municipalities throughout the country are doing, he said. There's nothing that extraordinary in it, he said. Most systems are 1 MW or greater, he said, requiring a minimum of 5 acres, which would likely be difficult to site on the island.

Another limiting factor, said Planning Director Gagnon, is the substation and what it can handle. Bar Harbor has two substations. With the price of land, she said, "I don't think it's likely that anything within half a mile of the one [substation] downtown will happen," which leaves just one other substation to connect to.

Secretary Brooks asked if that's where the 19 districts proposed in the ordinance came from. Planning Director Gagnon said staff decided to go outside the village area and noted that some lots incorporate more than one zone. If someone is interested in putting up panels, she said, staff wanted to ensure they could capture all of their land. Secretary Brooks asked if staff looked at what lots had enough acreage to hold them. No, said Planning Director Gagnon, as a prospective developer could purchase multiple lots and make a larger one.

Chair St. Germain asked if there had been any thought given to setback exceptions, given that some rural lots have large setback requirements. He also asked whether the panels would be held to height standards, and if they are going to be exempt from lot coverage should that language be added in the section in the LUO to the other items exempt from lot coverage (i.e., driveways).

Planning Director Gagnon said yes, language would be added to include them with other items exempt from lot coverage. Staff have not, at this point, added language exempting arrays from setback exceptions, she said, because "we're trying to make people feel comfortable that this is not going to be any more intrusive than something else, so we thought that respecting a setback was important." She noted that staff are also requiring a fence in the current draft of the proposal.

As for height, said Planning Director Gagnon, going too high, she said, would probably have a problem with the visual impact assessment. Staff research has not found that a commercial facility would approach height problems in any of the zones she said. Vice-chair Cough asked if 8-foot fences are allowed in any zone. Yes, said CEO Chamberlain, and neighbors can also give the OK to exceed height requirements for structures such as tennis courts.

Secretary Brooks said the idea that this is not an industrial use could be argued to some degree. She asked about the 19 zones and the particular uses in them. Industrial use, said Planning Director Gagnon, takes one raw product and creates something else out of it. Often through that

process it adds a value to that raw material. That's why this use would not be considered industrial, she said, because it harvests the sun and converts it into energy. It could be seen instead as a resource-based use, she said.

Secretary Brooks said some of the permitted uses in certain districts seem to have more restrictions with commercial use and asked how staff came up with the 19 zones. Staff focused outside the downtown area, said Planning Director Gagnon, with the exclusion of two districts. Many of these lots are bisected, she said, so a piece of land may be in several zones. If someone has a large enough piece of land and wants to comply with this high bar, they could, she said, but the likelihood that will happen is low.

At Vice-chair Cough's suggestion, Planning Director Gagnon asked if this would be brought back to the board for a workshop in two weeks, as the next meeting's agenda will be heavy. The board will take that under advisement, said Chair St. Germain.

II. Accessory Dwelling Units (continuation of discussion from 3/3/21 meeting)

Chair St. Germain asked for Planning Director Gagnon's thoughts on his changes to her work. Planning Director Gagnon pointed the board to a separate email and a summary of the four districts. The question is, Mount Desert Street Corridor would allow it, she said, so why has it not been taken off there? She pointed the board to an email from Rob DeSimone and referenced a document sent by Secretary Brooks. If you put too many restrictions in place, it won't happen, said Planning Director Gagnon.

Chair St. Germain agreed that the requirement to have the Accessory Dwelling Unit (ADU) be 1/3 of the principal dwelling is quite restrictive. He asked for the board's thoughts. Vice-chair Cough referenced the article sent by Secretary Brooks, which he thought was "spot on," including limiting the ADU to 2/3 of the size of the principal structure. Chair St. Germain asked Secretary Brooks to summarize the article she'd sent.

Chair St. Germain asked Vice-chair Cough if he thought that adjusting the definition of ADU to 2/3 the size of the principal structure would work. Vice-chair Cough read language from the article referenced. He felt that the board was on track, judging by Portland's ordinance.

Planning Director Gagnon thought the board had previously turned down language requiring the subordinate structure to be in keeping with and not to exceed the height of the principal dwelling. It doesn't matter whether the ADU exceeds the height of the primary structure, she said. Vice-chair Cough said was correct but that he was reading the entire article. The idea is to minimize the hurdles, said Planning Director Gagnon, keeping in mind administration of the requirements, which should not be overly cumbersome. Let's figure out something that's achievable and attainable, she said.

Vice-chair Cough said he wouldn't necessarily be opposed to a large ADU if the character was right, with the original house then deemed subordinate. Planning Director Gagnon said CEO Chamberlain had pointed out that a number of houses in town are quite small and has asked what

would happen if the house is so small you're not going to build something 2/3 the size. Planning Director Gagnon suggested limiting the ADU to 2/3 or 1,200 square feet, whatever comes first.

Character is hard to apply and administer, said Planning Director Gagnon. Vice-chair Cough felt Planning Director Gagnon was on the right track with her previous comments. Either way you're creating the relationship of subordinate and primary, he said.

CEO Chamberlain felt that there are so many limitations, why place one more on this housing you're trying to encourage? It seems like you're making it more difficult, she said. Vice-chair Cough said part of his thinking stems from where he lives. Design Review should be handling the historic side to fit the character. That's important to him, he said. On the other side of it, he agreed with CEO Chamberlain, he said: "Let's kind of let it roll."

Chair St. Germain asked CEO Chamberlain to repeat what she felt the restriction was the board should back off from. She said she wouldn't put a limit based on the size of the other unit. "Maybe you have two houses that are the same size — do we really care?" she asked. The town is starved for housing, and if we keep putting restrictions, you'll get a few, but not a lot, she said. There are some small houses, and if you limit it to a 2/3, that's not feasible. Chair St. Germain agreed. That's a great point, he said. He asked if there is any appetite to prohibit VRs from being part of this and whether that is built into the language.

Vice-chair Cough was okay with not allowing VRs in the new units. Secretary Brooks agreed. She asked what would happen if a homeowner was operating a VR in their main home and wanted to add an ADU that wouldn't be a VR. Shouldn't that be allowed, he asked? Vice-chair Cough said a property owner can do that under current rules and that would become relevant if the dimensional standards would allow them to exceed area per family. Secretary Brooks asked it that would cause a property owner to lose the income from a VR.

Planning Director Gagnon said only a handful of people rent a part of their house. Vice-chair Cough felt that property owners who are allowed to operate a VR and want to build an ADU, "then that's great." We want to encourage people to add more housing supply regardless of their current situation, said Secretary Brooks.

Planning Director Gagnon said the way it is right now the ADU can't be a VR. Chair St. Germain said he may have accidentally suggested that, but that Secretary Brooks's point is valid, that an allowance for one is a good idea.

Planning Director Gagnon said the department must write things staff can administer and enforce, and that serve a purpose and that aren't convoluted. People have to look at it with reasonable confidence that they will be able to do what they want, she said.

Secretary Brooks asked if some of the other restrictions should also be done away with, not just area per family. Planning Director Gagnon felt it needed to be thought out more. The idea is to encourage creation of housing that is for year-round people that isn't VRs, said Chair St. Germain. He asked if there are other things, as Secretary Brooks suggested, the board can modify to further encourage that creation.

Planning Director Gagnon felt it would become difficult to keep track of modifying numerous dimensional standards at once. Vice-chair Cough felt that adding anything new “is likely going to torpedo this.” and that the board should give it time. Member Eleftheriou agreed. We want the public to embrace this, he said. Simplicity is key, he said, and minimum area per family will give us the most bang for the buck, he said. Chair St. Germain asked Planning Director Gagnon’s opinion on adding a deed restriction. Planning Director Gagnon was concerned with deed restrictions, as things change and that is a high bar. Vice-chair Cough felt a deed restriction would be too cumbersome and would add to the cost of it.

Chair St. Germain asked if there is a clear path forward to changing the definition of ADU. Vice-chair Cough asked about expanding the districts. Secretary Brooks said she’d prefer that all water and sewer districts have the option but said that hadn’t gone over well last time. Chair St. Germain supported the idea of water sewer districts. Chair St. Germain asked if the board could move forward with a coherent proposal.

We’re not there with all of the ordinance language, said Vice-chair Cough, but we’re on the same page. Planning Director Gagnon asked why the preference would be for including all water and sewer districts and said that area per family is the hurdle. Zoning right now is basically geared toward the wealthy, she said. If you want workers to live here and have a year-round community you have to look at that, she said.

Mr. Eleftheriou said that some might question whether septic might be overburdened outside of water and sewer districts and that there must be provisions to guard against that. He felt there would be pushback about wells running dry and septic systems being overloaded.

Vice-chair Cough felt it should be left as is. Planning Director Gagnon asked whether concerns about water and sewer are real or perceived. Mr. Eleftheriou said that it only takes a few residents to “torpedo something.” Mr. Eleftheriou apologized and said he had to leave early. He left the workshop at 6:38 PM.

III. Discussion on rooftop parking (request of Planning Board chairman)

Chair St. Germain said his proposal would be to make parking one of the items exempt from height restrictions on a building and asked whether there is any support for that. Vice-chair Cough was fine with rooftop parking but wondered if there could be a requirement for lattice work or barrier to shade it from view.

CEO Chamberlain asked whether the board intended to have the car itself or the structure exempt from height requirements. It would be akin to mechanical space being exempt from height, said Chair St. Germain. This would be some form of parking structure that would be permitted and exempt from the height that vehicles could go into it.

Deputy CEO Gurtler asked if Chair St. Germain was talking about an open parking area on a building. Chair St. Germain replied that if an applicant could make it appropriate for the Design

Review Board he would be open to it. This is an attempt, he said, to allow people who are building new to have an option to keep the cars on the site and put them up higher.

Deputy CEO Gurtler asked where the measurement would be taken from if it were open air. He noted that if cover is required, sprinklers would be required as well. Chair St. Germain said sprinklers would likely be required, but since it's exempt from height it doesn't particularly matter where the height is measured from. There would be an inherent challenge in doing this, he said, but perhaps it would allow consolidation when a large entity is developing something they wouldn't also have to develop a 100-car parking area at the same time. Secretary Brooks felt requiring a roof over the cars would make a structure look taller.

Chair St. Germain gave an example of Mount Desert Island Hospital, which was renting from the town directly to have some parking spaces for employees. He noted that there is rooftop parking at the hospital in Bangor, and that the hospital here might be a prime user as they embark on plans to expand on a recent property they've acquired. The idea of it is great, said Vice-chair Cough, noting that the town does have a parking problem.

IV. Discussion on definition of "structure" (request of Planning Board chairman)

Chair St. Germain presented the item. He asked whether it would be appropriate to remove "below the ground" from the definition of structure, which includes structures above and below ground. It's virtually impossible for anyone preparing a site to be expected to count pipes coming into the building or know what's underground, he said. If somebody had a relatively good size yard and put something underground, and developed a garden on it, does it need to be considered a structure, he asked?

Vice-chair Cough asked if that would be considered utilities and aren't they exempt? They are considered structures in the definition, said Chair St. Germain, and are not exempt. He asked whether that can and should be enforced.

Below grade is taxed differently, Secretary Brooks pointed out, such as in the case of a large walk-out basement. Chair St. Germain posed another hypothetical of a property owner wanting to put parking underground and cover it with grass above. "Is that a bad thing to maintain what's on the surface and have a use such as parking or storage?" he asked. Is it in the board's interest to eliminate that as being considered lot coverage?

CEO Chamberlain said lot coverage is the percentage of the lot area, not the roof. A green roof would not be counted, she said. "Are you concerned that changing the definition of structure will allow you to be able to increase lot coverage?" she asked. "I would be very hesitant to exclude things below the earth or below the ground from the definition of structure," she said, "because then you've said a basement isn't a structure, and I think we'd all probably agree a basement is clearly a structure." If a parking garage were to be constructed below the earth that was grassed above, she would not count that as lot coverage because of the way lot coverage is calculated.

Chair St. Germain asked if it would be better to approach the issue by declaring that below ground structures don't count toward lot coverage. "Is a structure that's underground not

considered lot coverage?" CEO Chamberlain couldn't think of an example of when she'd dealt with that, but said if she saw a lot that was completely covered in grass, "in what world would you ever call that lot coverage if you couldn't see something below?"

Chair St. Germain said the aim is, that if you have a limitation in a district of lot coverage can you maintain the green space and not be considered to be exceeding the allowable lot coverage. "Is it already understood that if it's green on top it's not considered lot coverage?" he asked. That's logical to me, said CEO Chamberlain, but said if she had an application in front of her she would get an opinion from legal counsel.

Deputy CEO Gurtler suggested it might be easier to deal with the lot coverage definition because there are so many different structures. It might be easier to figure out what would be exempted from lot coverage rather than saying anything underground, he said. Chair St. Germain summarized the staff's feeling that "to exempt things from underground from being a structure is not the way to go about this." Secretary Brooks asked about piers. "A pier does not count toward lot coverage, correct?" Correct, said Code Enforcement Officer Chamberlain. Only the part on the land is considered lot coverage.

Planning Director Gagnon asked what prompted this. If staff understands that they can find a way to address it, she said. Changing the definition of structure, which is a linchpin definition in the Land Use Ordinance, could have a large amount of unintended consequences, she's said.

Chair St. Germain said this was prompted by a subdivision application a few years ago in which an abutter said things underground, such as septic systems, must count toward lot coverage. The abutter was opposed to the expansion of a project. "I don't see how anybody can know what the amount of square footage that their septic system can take, nor do I think that we should be considering that," he said. Planning Director Gagnon said, in her mind, lot coverage is equal to impervious areas, anything that doesn't allow water to seep through. She said there are other ways to address this than changing the definition of structure. Chair St. Germain said he simply wanted to talk about it.

Vice-chair Cough asked whether adding to a definition might address this. Chair St. Germain said that, under his restaurant, he has been told there is a septic system — a strict reading could count that toward lot coverage, for instance. Vice-chair Cough asked if the board addressed this when they discussed building a parking section into a hill where you could park underneath and on top. Chair St. Germain said yes, in that application, you have parking over parking, allowing somebody with that land configuration to double up on parking.

Planning Director Gagnon felt if Chair St. Germain wanted clarification on lot coverage, it should be addressed in lot coverage. Chair St. Germain asked for the board to give that thought and to return to it in the future and he said he would "take the warning" that modifying the definition of structure is not advisable.

Workshop
Bar Harbor Planning Board
Wednesday, April 21, 2021 — 4 PM
Proposed regulations for accessory dwelling units and solar photovoltaic systems

*Held via Zoom webinar, as allowed under state law, due to COVID-19 pandemic,
and broadcast live on Bar Harbor Planning & Code Enforcement Facebook page*

Attending:

Planning Board: Chair Tom St. Germain, Vice-chair Joe Cough, Secretary Erica Brooks, and members Basil Eleftheriou and Millard Dority.

Staff: Planning Director Michele Gagnon, Code Enforcement Officer Angie Chamberlain, Deputy Code Enforcement Officer Mike Gurtler and Assistant Planner Steve Fuller.

Mr. Eleftheriou asked if there had been a change regarding contacting Planning Board members via email, as it used to be that members could be contacted by the public individually. He asked why emails for individual Planning Board members were not provided on the website.

Planning Director Gagnon explained it is to avoid *ex parte* communication, as the board's role is a judicial one. She explained that, if a member of the public wants to ask an individual member a general question it should be through a non-Planning Board address. She said the public should not be asking Planning Board-related questions to individual members.

Assistant Planner Fuller noted staff had taken the same approach with both the Board of Appeals and Design Review Board, both of which had previously had individual email addresses for individual members posted. Vice-chair Cough said this was a concern he'd also brought up in the past. He said it is not indicated on the website who (board members, staff, etc.) receives messages sent to the email address listed there (planningboard@barharbormaine.gov). Vice-chair Cough felt it should be explained, in the interest of transparency.

Mr. Eleftheriou agreed with Vice-chair Cough. He said he understood the *ex parte* communication aspect but said that at some point "you have to trust your board members, they've been through some training, they understand what *ex parte* is." He felt it would be worse if someone communicated via a private email, which would not be part of the public record.

Code Enforcement Officer Chamberlain said she'd attended a training years ago where it was recommended that board members not use individual emails, in part because it's easier to provide all emails when the town receives a Freedom of Access Act request. Assistant Planner Fuller said emails go to the four staff members present in the meeting, Administrative Assistant Tammy Desjardin and the five Planning Board members. He acknowledged board members'

concern and said the language on the website could be altered to more clearly reflect who receives emails sent to the group email address listed.

Planning Director Gagnon noted she includes a disclosure at the bottom of all her emails regarding Freedom of Access Act. She said board members should not have any individual discussion on anything they are going to legally act on. If board members are unsatisfied with the arrangement, she said, it should be taken up with the town manager or Town Council. Mr. Eleftheriou said it would be helpful to have information about Freedom of Access Act requests and the public record included on the website.

Assistant Planner Fuller shared his screen with the website page in question pulled up. The language already broadly indicated who emails go to, he said, and also had a note about *ex parte* communication. Vice-chair Cough said he hadn't seen that several weeks ago. Assistant Planner Fuller said he wasn't sure when it was added. Assistant Planner Fuller noted that language wasn't on the Board of Appeals or Design Review Board webpages but said staff would add it.

Chair St. Germain experienced technical difficulties with his internet connection. He signed off and Vice-chair Joe Cough took over running the workshop. Discussion turned to accessory dwelling units. Planning Director Gagnon explained some changes that had been made to the document. The document is far from ready for the board to take action on, she said. It will be on the agenda every meeting, she said, following a request from Vice-chair Cough, but she said this was an occasion to be able to discuss it.

Mr. Dority liked Planning Director Gagnon's suggestion that board members go through the document individually, then come back together as a group and go over things. Vice-chair Cough worried how that might affect the timing and potentially getting this on the ballot in November.

Mr. Eleftheriou asked if CEO Chamberlain ever got questions about accessory dwelling units (ADUs). She replied that staff get requests about ADUs, but they currently aren't treated differently than a regular dwelling unit (because the same standards must be met). The definition was put in the ordinance years ago along with language about vacation rentals, she said, as another type of vacation rental. Somebody forgot to remove the definition of ADUs when the vacation rental language was removed, she said.

Mr. Eleftheriou had hesitations about including ADUs in districts that aren't on town water and sewer, but added that if they are already being utilized to some degree and are on the books, "maybe it's not an elephant in the room to consider some outlying areas" as places for ADUs. CEO Chamberlain recommended the board look at all of the districts presented by staff. She said the Schooner Head district, for instance, has a minimum lot size and minimum area per family of 5 acres. She suggested that might be a good place to allow ADUs. Mr. Eleftheriou agreed.

CEO Chamberlain said she felt the ADU definition needed some work. She said it would not work for many districts if it were to be read as being an option only for a single-family dwelling. She presented a hypothetical scenario that the board then discussed.

Planning Director Gagnon noted a mistake in the document on page three. She said it should read that an ADU *could not* be registered as a vacation rental.

Secretary Brooks asked a question about triggering subdivision review. Subdivision would not be triggered because the language is focused on single-family, said Planning Director Gagnon. CEO Chamberlain said it would be worth comparing minimum area per family and minimum lot size in each district. Many will already be able to do two, she said. She wondered whether the intention is to do one above what's normally allowed or just one for every single family. Mr. Dority had the same question. CEO Chamberlain said the intent would be to have one extra.

Secretary Brooks felt the original intent was to allow residents to create more ADUs. Some rural zones have large area per family requirements, she said, but are prevented from developing an ADU under current rules. If people in districts that aren't on town water and sewer decide to develop another ADU through proper channels, with soil testing, water access, and the like, said Secretary Brooks, "I don't have a problem with that."

Vice-chair Cough said putting one in the outlying districts wouldn't be too complicated. He said he felt that restricting size to 2/3 of the primary dwelling unit was too small in some cases. He felt putting a number restriction on it could be problematic.

Planning Director Gagnon asked if there was no number on it, was it no longer secondary to the principal? Vice-chair Cough said the board had discussed that it would be okay to flip them, and having whichever is the larger dwelling be considered primary. As long as one of those was not a weekly rental the board was okay with that, he said.

Secretary Brooks asked if the board should remove the size restriction. If it was within setbacks, does it matter? she asked. Planning Director Gagnon said it would be possible to remove the size restriction but wondered again about whether it would be considered accessory. Vice-chair Cough felt it wasn't necessary to change the language and said it might be better to weigh the question out in public.

Mr. Eleftheriou said he felt lot coverage would likely be a limiting factor with a lot of this. Mr. Dority said the other standards would control the size of a dwelling unit.

Mr. Eleftheriou felt the minimum area per family should be the only restriction eliminated. He said it would almost have to be done to make it worthwhile sometimes for someone to utilize some of this.

Planning Director Gagnon said if someone can match or exceed the size maybe it's a secondary dwelling unit, but not an accessory dwelling unit. The use of the word "accessory" in the planning context, she said, is when you're talking about something that's subordinate to something else. Every word is looked at closely and every sentence taken apart, she said. She cautioned the board that it could be considered misleading. The purpose is still valid, she said.

Vice-chair Cough summarized the tentative plan discussed, which included a quick turnaround on board member recommendations for Item 4. He asked a question about timing and public comment. Planning Director Gagnon said if board members did it quickly and sent it back to her, she could tabulate it and put the feedback together and offer an analysis.

Planning Director Gagnon asked what Vice-chair Cough wanted to get out of the public hearing and suggested that a public information session might be a good start. Mr. Dority said it's a good idea to get public comment before starting the official public hearing process.

Planning Director Gagnon suggested putting together a separate document that is more succinct. Draft orders are more difficult to read and digest, she said. Vice-chair Cough agreed. He asked if the board would be running afoul of notification rules by sending Planning Director Gagnon individual comments. Planning Director Gagnon said she did not feel it would violate anything. Vice-chair Cough was fine with that as long as other board members did not see the information until they received the packet. Assistant Planner Fuller specified which email address it should be sent to. It should go to mgagnon@barharbormaine.gov (or planner@barharbormaine.gov). It would then be public once it's in the packet, said Assistant Planner Fuller.

Mr. Dority had a public safety issue and stepped away briefly. Vice-chair Cough asked if staff could come up with alternative verbiage. Planning Director Gagnon said she would look into it.

The board moved on to a discussion about the draft of the proposed solar photovoltaic systems ordinance. Planning Director Gagnon summarized the changes made to the document between the previous board meeting and the workshop. There was nothing big, she said. She noted that wind turbines are allowed in 19 districts and that those are largely the same districts where staff is looking at allowing solar photovoltaic systems. Wind turbines are permitted by CEO Chamberlain, she noted, and are not subject to site plan review by Planning Board. Planning Director Gagnon cited that as a seeming inconsistency (as solar, as proposed, would be subject to site plan review by the Planning Board).

Vice-chair Cough said he felt the board was “glossing over” the lot coverage issue. Wind turbines are a different kind of lot coverage issue than photovoltaic panels, he said. Mr. Dority said he was on the board when the wind turbine language was added and that it was geared toward small installations. Planning Director Gagnon noted that the language doesn’t reflect that.

Mr. Eleftheriou said he was satisfied with the solar photovoltaic proposal as presented and felt it should be put on the agenda. Then the board could start holding public hearings, he said.

Secretary Brooks said she agreed that this differs from wind turbines with respect to lot coverage, as Vice-chair Cough said. Chair St. Germain, who had been able to rejoin the meeting, asked if lot coverage was prioritized for solar panels, should it not also be prioritized for affordable housing? Secretary Brooks was not comfortable decreasing lot coverage for this particular use (solar) and felt it could be done later in the process.

Planning Director Gagnon asked if the board would consider the area beneath the panels to be impervious if the panels are elevated and there is green cover underneath. If that is not exempt from lot coverage requirements, she said, it becomes really hard to do the use (especially in districts with low lot coverage allowances). Vice-chair Cough felt that if it’s a large area being impacted, the growth would be different than what would be there without the panels.

Planning Director Gagnon felt the question raised about dimensional requirements was valid and should be dealt with at another time. Dimensional requirements, she said, are far and above what is needed for health safety and welfare. Some of the dimensional requirements are prohibitive and not conducive to creating middle-income housing, she said.

Vice-chair Cough raised a question about principal structures and uses. Residents can have more than one principal structure, said CEO Chamberlain, and one doesn’t necessarily become accessory to another. Anything other than solar panels (i.e., associated infrastructure that is impervious or creates impervious conditions) would be subject to lot coverage the way the draft ordinance is written, said Planning Director Gagnon.

Vice-chair Cough asked for any other comments. There were none. The workshop ended around 5:37 PM.



Town of Bar Harbor Planning Department

STAFF REPORT

Completeness Review SITE PLAN APPLICATION SP-2021-02 — OCEANSIDE KOA

Date: April 27, 2021
Project Location: The property is located at 135 County Road, Tax Map 211, Lot 1. The parcel encompasses ± 2.63 acres of land, according to town tax records.
District: The subject land is in the Town Hill Residential Corridor, Town Hill Residential and Stream Protection zoning districts.
Applicant/Owner: The owner of the property is Kampgrounds of America, Inc. (550 N. 31st Street, Suite 400, Billings, MT 59101) and the applicant is Bar Harbor Oceanside KOA (136 County Road, Bar Harbor, ME 04609).
Proposed Project: The construction of nine worker campsites. This will improve campground operations and worker privacy. Worker sites will be relocated from the existing campground area (Tax Map 211, Lot 3/104 County Road, in Bar Harbor) to this property.
Permitted Use: Campground
Meeting Date: May 5, 2021 - Completeness
Applicable Laws: 125-66 Submission Requirements

Review Process:

1. Applicant presents application
2. Questions and comments from the board
3. Public comment period (optional)
4. Waiver requests

Proposed motion: Move to grant the waivers requested by the applicant as listed in the checklist such waivers will not unduly restrict the review process, as they are inapplicable, unnecessary or inappropriate for a complete review.

5. Review of Submission Requirements 125-66/checklist

Proposed motion: Move to find the application SP-2021-02 Oceanside KOA complete, per the Bar Harbor Land Use Ordinance section 125-66, with the exception of the letter of no violation, DHHS well permit, and the capacity letters from Public Works, Fire Department, and Police Department, and to schedule a public hearing on June 2, 2021.

Staff Comments:

- 1) Need letter of no violation from the CEO.

- 2) Need capacity letters from PW, FD, and PD.
- 3) Need DHHS permit for well (this will likely be a condition of approval)



Town of Bar Harbor

STAFF REPORT

SUBDIVISION/SITE PLAN

PUD (OUTLYING)-2021-01

JONES MARSH AFFORDABLE HOUSING DEVELOPMENT

COMPLETENESS REVIEW

- Owner/Applicant:** Island Housing Trust. C/O Marla O'Bryne
(1366 Maine-102, Bar Harbor, Maine 04609)
- Proposed Project:** The applicant proposes to subdivide a 30-acre property into nine lots (8 buildable for residential use and one lot reserved for open space). Six of the buildable lots would have single-family homes and two of the buildable lots would have two-family homes, for a total of ten dwelling units.
- Location:** Tax Map 212, Lot 43-1 off of State Route 3 and encompassing a total of 30 acres according to town tax records.
- Districts:** Town Hill Residential and Town Hill Rural districts.
- Allowed Use:** One-family, two-family, and PUD-O
- Important Dates:** February 3, 2021 - Sketch Plan Review
May 5, 2021 – Completeness Review
- Applicable Laws:** 125-66 submission requirements for site plan

Process and Proposed Motions:

1. Applicant presents application
2. Questions and comments from the board
3. Public comment period
4. Waiver requests

Proposed motion: Move to grant the waivers requested by the applicant as listed in the checklist and change #9CC from waiver to exhibit; as such waivers will not unduly restrict the review process, as they are inapplicable, unnecessary or inappropriate for a complete review.

5. Review of Submission Requirements 125-66/checklist
Proposed motion: **Move to find the application PUD-2021-01 Jones Marsh Affordable Housing Development incomplete per the Bar Harbor Land Use Ordinance section 125-66 and to schedule a public hearing on June 2, 2021. The information missing from the application includes: the letter of no violation, the capacity letters from Public Works and Fire Department, permits from ACOE/MDEP for impact to wetlands and MDEP stormwater, dimensions of parking spaces on site plan, letters from state agencies (MHPC, IFW, and NAP), surveyor seal, name and address of project owner on site plan, location of monumentation on site plan, and location of all other subdivisions within 200 feet with owners name,**

The following information should be provided for Public Hearing/Compliance meeting:

1. The applicant is responsible to explain how the application meets standards. Although this was done for 125-67 General Review Standards and 125-69 Standards for particular Uses, Structures or Activities specifically M. PUD-O, it was not done for 125-69 N. Subdivisions.
2. Need letter of no violation from CEO.
3. Need capacity letters from FD and PW.
4. As the intention is for the road to be town-owned, the applicant should consider getting on the Town Council agenda prior to submitting the final application to introduce the matter to the Town Council per the Town's Road Acceptance Policy.
5. The Homeowners Association (HOA) document should include language pertaining to the maintenance of stormwater management structures to ensure proper function long-term.
6. Three state permits are needed ACOE/MDEP for impact to wetland and MDEP stormwater.
7. MDOT permit shows a requirement for vegetation management at the intersection Route 3. The HOA document should include language pertaining to maintenance of the vegetation to ensure proper sight distance long-term.
8. If the White Deer Circle fire pond is to be used for fire suppression it either needs to be town-owned or there needs to be permission provided by the owner.
9. The dimension of the parking spaces should be shown on the site plan.
10. The setbacks and related narrative for what is being relaxed under the PUD-O as described in exhibit 1.I B Lot Standards should be on the site plan
11. Letters from state agencies (MHPC, IFW, and NAP) need to be provided
12. The name and address of the owner needs to be on the plan (not only is this a requirement of the ordinance, it is needed in order to record the plan at the Hancock Registry of Deeds)
13. A surveyor needs to seal and sign the plan.
14. The location of all monumentation needs to be shown on the plan.
15. All other subdivision with 200 feet with owners name should be provided.

The waivers for the modification of standard that the applicant is seeking appears to be (the applicant should provide a narrative for each):

1. **Per 125-69M6d1** - Reduce the front setback from 75 feet to 60 feet and the rear set back from 25 feet to 10 feet.
2. **Per 125-67B4a** - Allow parking and maneuvering in the front setback.
3. **Per 125-67E22** - Allow driveway in side setback to avoid impact to wetland for lot #1
4. **Per 125-67B4a** - Allow parking in ROW in front setback for lot #8
5. **Per 125-67DD** – Allow overhead utilities

Town of Bar Harbor
Proposed Regulations for Solar Photovoltaic (PV) Systems

1. Purpose

These regulations are primarily intended to allow for the construction and operation of larger-scale solar photovoltaic (PV) systems that produce energy for use on-site and/or off-site by establishing use-specific standards to ensure, to the greatest extent possible, that the project is sited and designed to maintain aesthetic quality, visual character, and compatibility with surrounding uses. These regulations do not apply to solar PV systems accessory to a permitted use or structure.

2. Definitions

Array:

Any number of electrically connected photovoltaic (PV) modules providing a single electrical output.

Solar Photovoltaic (PV) System, Principal Use:

A solar collection system consisting of one or more ground-mounted solar photovoltaic cells, panels or arrays, and solar-related equipment that rely upon solar radiation as an energy source for collection, inversion, storage and/or distribution of solar energy for electricity generation. The ground-mounted solar collection system shall have a total surface area (all panels and/or arrays) greater than 20,000 square feet in size.

Solar Photovoltaic (PV) System, Accessory Use:

A solar collection system accessory to a permitted use or structure, consisting of one or more roof-mounted and/or ground-mounted solar photovoltaic cells, panels or arrays, and solar-related equipment that rely upon solar radiation as an energy source for collection, inversion, storage and/or distribution of solar energy for electricity generation. The ground-mounted solar collection system shall not exceed a total surface area (all panels and/or arrays) of 20,000 square feet in size.

Photovoltaic (PV):

A semiconductor-based device that converts light directly into electricity.

3. Districts

The table below presents the districts where "solar photovoltaic (PV) systems," principal use, are proposed to be allowed. As many lots are bisected by two, and sometimes more, districts, we are proposing to allow solar PV systems in 19 districts outside the village area. For reference purposes, the table shows existing maximum lot coverage for each of the subject districts.

	Allowed	Existing Max Lot Coverage
§ 125-17 Bar Harbor Gateway	N	
§ 125-18 Village Historic	N	
§ 125-19 Mount Desert Street Corridor District	N	
§ 125-20 Village Residential	N	
§ 125-21 Downtown Village I	N	
§ 125-21.1 Downtown Village II	N	
§ 125-21.2 Downtown Village Transitional	N	
§ 125-22 Downtown Residential	N	
§ 125-23 Emery District	Y	10%
§ 125-24 Hulls Cove Business	Y	75%
§ 125-26 Hulls Cove Residential Corridor	Y	25%
§ 125-27 Hulls Cove Rural	Y	25%
§ 125-28 Indian Point Residential	Y	25%
§ 125-29 Indian Point Rural	Y	25%
§ 125-30 Industrial	Y	50%
§ 125-31 Ireson Hill Corridor	Y	25%
§ 125-32 Ireson Hill Residential	Y	25%
§ 125-33 McFarland Hill Residential	Y	10%
§ 125-34 McFarland Hill Rural	Y	25%
§ 125-35 Otter Creek	Y	10%
§ 125-36 Resource Protection	N	
§ 125-37 Salisbury Cove Corridor	Y	25%
§ 125-38 Salisbury Cove Residential	N	
§ 125-39 Salisbury Cove Rural	Y	25%
§ 125-40 Salisbury Cove Village	N	
§ 125-41 Schooner Head	N	
§ 125-42 Scientific Research for Eleemosynary Purposes	Y	50%
§ 125-43 Town Hill Business	Y	50%
§ 125-44 Town Hill Residential Corridor	Y	15%
§ 125-45 Town Hill Residential	Y	15%
§ 125-46 Town Hill Rural	Y	25%
§ 125-47 Shoreland General Development I	N	
§ 125-48 Shoreland Limited Residential	N	
§ 125-49 Shoreland General Development II (Hulls Cove)	N	
§ 125-49.1 Shoreland General Development III	N	
§ 125-49.2 Shoreland General Development IV	N	
§ 125-49.3 Shoreland Maritime Activities District	N	
§ 125-50 Stream Protection	N	
§ 125-51 Marine Research	N	
§ 125-51.1 Educational Institution	N	

4. Requirements for solar PV systems, primary use

- A. Would be reviewed by the Planning Board as Major Site Plan.
 - B. Would be required to meet all requirements of the district(s) where they are proposed to be allowed with the exception of **Lot Coverage**.
 - C. Would be required to submit all applicable information per Submission Requirements §125-66, in addition to a **Visual Impact Assessment**, a **Decommissioning Plan**, and an **Emergency and Operation/Maintenance Plan**.
 - D. Would be required to meet all applicable General Review Standards per §125-66, in addition to **Safety, Fencing and Screening**, and **Visual Impact Standards**.
1. **Lot Coverage**. Solar PV systems located over live ground cover, with sufficient space between the panels and above the ground to allow sunlight for vegetation to grow, shall be exempt from lot coverage calculations due to sharing of the space. ***Other related amenities such as, but not limited to, roads, etc. are not exempt from lot coverage calculations.*** Live ground cover includes, but is not limited to, native perennial vegetation and foraging habitat beneficial to gamebirds, songbirds, and pollinators.
 2. **Safety**. Solar PV Systems shall be installed in compliance with the NFPA 70 National Electric Code and the NFPA 1 Uniform Fire Code as adopted by the town.
 3. **Fencing and Screening**. Perimeter fencing shall be installed around the boundary of the solar PV system. The fence shall be elevated by a minimum of 5 inches off the

EXEMPTION FROM LOT COVERAGE RATIONALE

Providing exemption from lot coverage is suggested by guidance documents developed by entities such as the American Planning Association and Maine Audubon.

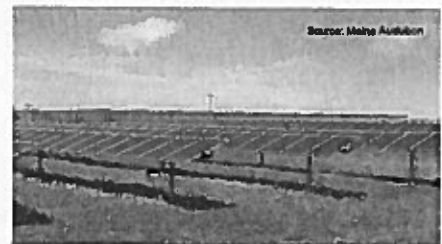
As shown in the picture below, solar panels create a minimal amount of impervious surface.

A community based solar farm* requires approximately 5 acres of land to produce 1-megawatt (MW) of electrical power and 25 acres to produce 5 MW. One (1) MW can supply, on average, enough electrical power for approximately 150 homes.

Requiring that Solar Photovoltaic (PV) System (principal use) meet lot coverage requirements would greatly reduce available locations and feasibility in Bar Harbor.

Lot coverage standards for the 19 subject districts range from 10% to 50%, with the exception of one district where it is at 75%. Both the lot coverage mode and the median is 25%. For example, if 25% lot coverage were applied without exemption, a 1 MW solar farm would require about 20 acres and a 5 MW farm would require 100 acres.

The proposed lot coverage exemption would only apply to the actual Solar Photovoltaic (PV) System (principal use) and not any associated structures, roads or other amenities that create impervious surfaces.



*Community based solar farm is one that produces between 1 to 5 MW

ground to allow for passage of small animals. The fence shall contain appropriate warning signage posted in such a way that it is clearly visible on the site. Any portion of the fence visible from a road or abutter's property shall be screened.

4. **Visual Impacts.** A solar PV system shall be sited on a lot in a manner that reduces the visual impacts of the installation to the greatest extent that is practical. The Planning Board may impose design-related conditions where findings of negative impacts on sensitive resources, as listed below, are made.

The applicant shall prepare a visual impact assessment to include a narrative and demonstration detailing the extent to which the proposed solar PV system would be visible from any designated scenic resource(s); Acadia National Park; archaeological and historic resources (specifically those listed in the National Register of Historic Places, or eligible for inclusion); and the distance to the proposed solar PV system from the designated resources and noted viewpoints.

Information to be submitted shall include:

- (a) A photomontage, field mockup, or other technique(s) to identify the potential visual impacts, at design capacity, of the proposed facility on sensitive resources and adjacent properties.
 - (b) Photos showing existing site vegetation, structures, and land uses of the subject lot and abutting properties; views of the proposed solar PV system from sensitive resources and adjacent properties; and showing the topography of the subject lot and abutting properties.
 - (c) Landscaping, screening, and buffering plan showing location of proposed plantings, screening, and buffering and existing vegetation to be retained.
 - (d) Demonstration that the siting of the solar PV system has reduced the visual impact to the extent practical by methods that may include, but are not limited to, the following:
 - i. Avoiding impacts to sensitive visual resources, as listed above;
 - ii. Installing the solar PV system in such a way as to use natural topography to obscure the project;
 - iii. Using material and colors that blend with the background; and
 - iv. Retaining or planting vegetation to obscure views of the solar PV system.
5. **Financial capacity.** Proof of financial capacity to build, maintain, and remove/decommission the solar PV system facility.

6. Emergency and Operation/Maintenance Plans

The owner or operator shall provide:

- (a) A plan including but not limited to a project summary, electrical schematic, and site plan to the town's Police Chief and Fire Chief. All means of shutting down the solar PV system shall be clearly marked.
- (b) A 24-hour emergency contact name and phone number to respond to public safety inquiries throughout the life of the solar PV system.
- (c) A general maintenance schedule for the solar PV system including the replacement/removal of all major components during the lifespan of the facility.
- (d) A list of cleaning chemicals and solvents, which shall be low in volatile organic compounds, to be used during the operation or maintenance of the facility (including biodegradable products).
- (e) An Integrated Vegetation Management (IVM) Plan that promotes desirable, stable, low-growing plant communities such as, but not limited to, native perennial vegetation and foraging habitat beneficial to gamebirds, songbirds, and pollinators through the use of appropriate, environmentally sound, and cost-effective methods. The goal is to balance safe, reliable, cost-effective vegetation management to attain stable desired plant communities while minimizing risk to human health and the environment. The plan shall address the following:
 - 1) The type of existing and proposed plant communities.
 - 2) Describe the use of control mechanisms to manage unwanted vegetation and promote desirable plant communities short- and long-term, such as, but not limited to: biological control (grazing sheep, goats, and other animals); mechanical and manual control (mowing, cutting, grubbing, hand-pulling, and tilling); cultural control (introduction of specific plants or mulches); and chemical control (application of herbicides).
 - 3) Quinquennial reevaluation of the IVM plan to determine efficacy, and make adjustments necessary to improve the plan. The findings and proposed amendments to the IVM plan shall be submitted to the Code Enforcement Officer who shall review the plan per the above stated goal, request changes if needed, and accept the plan.

7. Decommissioning Plan

In the event a solar PV system ceases to operate, or where construction begins but is not completed, the owner shall be responsible to restore the site according to the decommissioning plan approved by the Planning Board. The owner shall submit a decommissioning plan that ensures that the site will be restored to a useful life without delay.

The decommissioning plan shall include, but is not limited to, the following:

- (a) Provision for the notification to the Code Enforcement Officer by certified mail of the proposed date of the discontinued operations of the solar energy system facility and of the removal schedule.
- (b) Provision for the removal of the solar PV system no more than 365 days after the date of the discontinued operations of the facility.
- (c) Provision for the removal of aboveground and underground equipment and of structures and foundations to least three feet below grade. Underground equipment, structures and foundations that are at least three feet below grade and do not constitute a hazard or interfere with agricultural or other resource-based land use do not need to be removed.
- (d) Provision for the removal of graveled areas, access roads, fences, gates, etc., unless leaving it in place benefits an agricultural or other resource-based land use.
- (e) Provision for the restoration of the surface grade and soil after removal of aboveground structures and equipment.
- (f) Provision for the revegetation of restored soil area with, to the maximum extent possible, native pollinator-friendly seed mixtures and plant species suitable to the area.
- (g) Provisions for the protection of public health and safety, as well as for protection of the environment and natural resources during the site restoration.
- (h) Provisions for the disposal of all solid and hazardous waste in accordance with state and federal waste disposal regulations.
- (i) A schedule for completion of site restoration work.
- (j) An estimated cost to implement the decommissioning plan at the estimated date of decommissioning. The cost is to be determined by an independent registered professional engineer in the State of Maine, to be mutually acceptable by the owner and the Town. The engineer will be paid by the owner but hired by the Town. The cost to implement to the decommissioning plan shall be acceptable to the Town's Finance Director.
- (k) Provision of financial assurance of performance.

8. Abandonment.

- (a) Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances to the Code Enforcement Officer, a solar PV system shall be considered abandoned when it fails to operate for more than 365 days.
- (b) If the owner of the solar PV system fails to remove the installation within 365 days of abandonment or the proposed date of decommission, the Town of Bar Harbor retains the right to use all available means to cause an abandoned or hazardous solar PV system to be decommissioned.

9. Financial Assurance of Performance

- (a) At the time of approval, the owner of the solar PV system shall submit to the town a bond or other financial surety outlined in Article IX, Performance Guarantees, of the Land Use Ordinance, to be approved by the Town's Finance Director, for 110% of the estimated decommissioning of the facility based on the average life span of the solar PV system.
- (b) The bond or other financial surety shall be in effect for as long as the solar PV system facility is in place. The performance guarantee shall be used by the town to remove/decommission the abandoned solar PV system (or the use of which has ceased) and associated abandoned structures only if the owner has not done so within the required 365-day period. Financial assurance provisions must be noted in the Planning Board Decision and must be transferred with the development if it is sold.

Related existing definitions in Ch. 125 to assist in providing a more comprehensive understanding of the proposed amendments

BUFFERS

Fences, landscaping, berms and mounds used to minimize any adverse impacts or nuisance of the site on adjacent areas.

DESIGNATED SCENIC RESOURCE

That specific location, view or corridor, which is identified as a scenic resource in the Town's Comprehensive Plan (Figure II.A.1). Such scenic resources shall consist of:

- A. A three-dimensional area extending out from a particular viewpoint on a public way or within a public recreational area, focusing on a single object, such as a mountain, a lake, or a bay, or a group of objects, such as a downtown skyline or mountain range, or island, resulting in a panoramic view corridor; or
- B. Lateral terrain features such as valley sides or woodland as observed to either side of the observer, constraining the view into a narrow or particular field, as seen from a viewpoint on a public way or within a public recreational area.

GROUND COVER

Small plants, fallen leaves, needles and twigs, and the partially decayed organic matter of the forest floor.

LOT COVERAGE

Except as otherwise provided in § 125-67B(8), the footprint area of all structures and improvements calculated as a percentage of the area of the lot shall be considered to be lot coverage, including but not limited to principal and accessory buildings; all improved vehicular and pedestrian surfaces, such as parking lots, roads, driveways, maneuvering spaces, and pedestrian walkways, regardless of the construction material employed; graveled areas and other nonvegetated surfaces. Unimproved natural surfaces of a site shall not constitute lot coverage, regardless of whether they are vegetated. Boats stored in cradles above an unimproved natural surface shall not constitute lot coverage. However, in the case of lumber yards, areas of stored lumber shall constitute lot coverage.

PHOTO SIMULATION

A computer representation of the appearance of a building or scene showing how it currently looks or how it will look after specified activities (i.e., the construction of a building, renovations, landscaping, etc.) have occurred.

SCREENING

A hedge or buffer strip at least five feet wide consisting of densely planted shrubs or trees at least four feet in height at time of planting and eventually reaching a mature height of at least six feet in height, but not exceeding eight feet, which provides an effective visual barrier.

VEGETATION

All live trees, shrubs, and other plants, including, without limitation, trees both over and under four inches in diameter measured at 4 1/2 feet above ground level.

VISUAL IMPACT ASSESSMENT

An assessment of impacts to the viewshed from and to a proposed development. The assessment should accurately show the proposed project to scale within the visual context of the viewshed. There are six components of a visual impact assessment: defining the project setting and viewshed, identifying key views for visual assessment, analyzing existing visual character, a depiction of the visual appearance of project alternatives, an assessment of the visual impacts of project alternatives and a proposal for methods to mitigate adverse visual impacts.

STRUCTURE, ACCESSORY

A. A structure which is:

- (1) Subordinate to and serves a principal structure or a principal use;
- (2) Subordinate in area, extent and purpose to the principal structure or use served;
- (3) Located on the same lot as the principal structure or use served, except as otherwise expressly authorized by the provisions of this chapter; and

- (4) Customarily incidental to the principal structure or use.
- B. Any portion of a principal structure devoted or intended to be devoted to an accessory use is not an accessory structure.

USE, ACCESSORY

- A. A use which is:
 - (1) Subordinate to and serves a principal use;
 - (2) Subordinate in area, extent and purpose to the principal use served;
 - (3) Located on the same lot as the principal use served, except as otherwise expressly authorized by this chapter; and
 - (4) Customarily incidental to the principal use.
 - B. An accessory use shall not include any use injurious or offensive to the neighborhood as initially determined by the Code Enforcement Officer.
 - C. Allowed off-street parking shall always be considered a permitted accessory use when required or provided to serve a permitted use in any district.
-

Draft Order

Of the Bar Harbor Town Council

For the November 2, 2021 Town Meeting

It is hereby ordered that the following article be placed on the annual town meeting warrant with voting thereon to be held by Australian ballot.

Warrant Article

Article XX LAND USE ORDINANCE AMENDMENT – Solar Photovoltaic System – Shall an ordinance, dated XXXXXXXX, XX, 2021, and entitled “An amendment to create and define a new use titled ‘solar photovoltaic system, principal use’ and associated definitions, allow the use in the Emery District, Hulls Cove Business, Hulls Cove Residential Corridor, Hulls Cove Rural, Indian Point Residential, Indian Point Rural, Industrial, Ireson Hill Corridor, Ireson Hill Residential, McFarland Hill Residential, McFarland Hill Rural, Otter Creek, Salisbury Cove Corridor, Salisbury Cove Rural, Scientific Research for Eleemosynary Purposes, Town Hill Business, Town Hill Residential, and Town Hill Rural districts; provide specific standards for the use;” be enacted?

Explanation

Solar Photovoltaic System

An amendment to Articles III, V, and XII

The Town of Bar Harbor hereby ordains that Chapter 125 of the Town Code is amended as follows:

[Please Note: Old language is stricken. New language is underlined.]

Chapter 125 , LAND USE ORDINANCE

Article III. Land Use Activities and Standards

§ 125-23 Emery District.

D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Agriculture, commercial

Commercial boatyard

Commercial stable

Kennel, boarding

Municipal school

Noncommercial kennel

Noncommercial stable

Road construction

Solar Photovoltaic (PV) System, Principal Use

Transient accommodations (TA-1)

Wireless communications facility

§ 125-24 Hulls Cove Business.

D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Bank

Commercial boatyard

Commercial fish pier

Commercial stable

Employee living quarters

Ferry terminal

Hospital

Light manufacturing/assembly plant

Marina

Multifamily dwelling II

Municipal school

Parking lot

Recreational boating facility

Research facility

Research production facility

Road construction

Shared accommodations (SA-2)

Shared accommodations (SA-3)

Solar Photovoltaic (PV) System, Principal Use

Transient accommodations (TA-1)

Transient accommodations (TA-2)

Wireless communications facility

§ 125-26 Hulls Cove Residential Corridor.

D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Campground

Cemetery

Multifamily dwelling II

Place of worship

Road construction

Solar Photovoltaic (PV) System, Principal Use

Transient accommodations (TA-1)

Transient accommodations (TA-3)

Transient accommodations (TA-4)

Wireless communications facility

§ 125-27 Hulls Cove Rural.

D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Agriculture, commercial

Campground

Cemetery

Mineral extraction

Mineral extraction and processing

Mobile home park

Municipal school

Place of worship

Retirement community

Road construction

Solar Photovoltaic (PV) System, Principal Use

Transient accommodations (TA-1)
Wireless communications facility

§ 125-28 Indian Point Residential.

- D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Cemetery
Road construction
Solar Photovoltaic (PV) System, Principal Use
Wireless communications facility

§ 125-29 Indian Point Rural.

- D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Agriculture, commercial
Cemetery
Road construction
Solar Photovoltaic (PV) System, Principal Use
Wireless communications facility

§ 125-30 Industrial.

- D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Automobile repair garage
Bulk oil and fuel tank storage
Commercial boatyard
Food processing and freezing (excluding slaughterhouse)
Food processing and freezing
Light manufacturing/assembly plant
Mineral extraction
Mineral extraction and processing
Newspaper or printing facility
Other processing and manufacturing facility
Research facility

Research production facility
Retirement community
Road construction
Solar Photovoltaic (PV) System, Principal Use
Terminal yard and trucking facility
Transportation facility
Upholstery shop
Uses or structures accessory to permitted uses or structures
Warehousing or storage facility
Wholesale business establishment
Wireless communications facility

§ 125-31 Ireson Hill Corridor.

D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Bank
Campground
Employee living quarters
Mineral extraction
Mineral extraction and processing
Multifamily dwelling II
Municipal school
Parking lot
Place of worship
Road construction

Solar Photovoltaic (PV) System, Principal Use

Transient accommodations (TA-1)
Transient accommodations (TA-2)
Transient accommodations (TA-3)
Transient accommodations (TA-4)
Transient accommodations (TA-5)
Transient accommodations (TA-6)
Transient accommodations (TA-7)
Transient accommodations (TA-8)
Warehousing or storage facility
Wholesale business establishment
Wireless communications facility

§ 125-32 Ireson Hill Residential.

- D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Cemetery

Eleemosynary, educational or scientific institution

Municipal school

Place of worship

Road construction

Solar Photovoltaic (PV) System, Principal Use

Transient accommodations (TA-1)

Wireless communications facility

§ 125-33 McFarland Hill Residential.

- D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Cemetery

Commercial stable

Municipal school

Place of worship

Road construction

Solar Photovoltaic (PV) System, Principal Use

Transient accommodations (TA-1)

Veterinary clinic

Wireless communications facility

§ 125-34 McFarland Hill Rural.

- D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Agriculture, commercial

Cemetery

Commercial stable

Eleemosynary, educational or scientific institution

Municipal school

Place of worship

Road construction

Solar Photovoltaic (PV) System, Principal Use

Veterinary clinic

Wireless communications facility

§ 125-35 Otter Creek.

D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Cemetery

Commercial stable

Municipal facility and grounds

Place of worship

Road construction

Solar Photovoltaic (PV) System, Principal Use

Veterinary clinic

Transient accommodations (TA-1)

Wireless communications facility

§ 125-37 Salisbury Cove Corridor.

D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Cemetery

Kennel, boarding

Multifamily dwelling II

Place of worship

Road construction

Solar Photovoltaic (PV) System, Principal Use

Transient accommodations (TA-1)

Transient accommodations (TA-2)

Transient accommodations (TA-3)

Transient accommodations (TA-4)

Transient accommodations (TA-5)

Transient accommodations (TA-6)

Wireless communications facility

§ 125-39 Salisbury Cove Rural.

- D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Agriculture, commercial

Campground

Cemetery

Commercial boatyard

Commercial stable

Place of worship

Road construction

Solar Photovoltaic (PV) System, Principal Use

Veterinary clinic

Wireless communications facility

§ 125-42 Scientific Research for Eleemosynary Purposes.

- D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Parking deck

Parking lot

Road construction

Solar Photovoltaic (PV) System, Principal Use

Wireless communications facility

§ 125-43 Town Hill Business.

- D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Automobile repair garage

Automobile sales lot

Automobile service station

Bank

Campground

Commercial boatyard

Eleemosynary, educational or scientific institution

Employee living quarters

Food processing and freezing (excluding slaughterhouse)
Food processing and freezing
Hospital
Light manufacturing/assembly plant
Mobile home park
Multifamily dwelling II
Municipal school
Newspaper or printing facility
Parking garage and parking lot
Research facility
Research production facility
Road construction

Solar Photovoltaic (PV) System, Principal Use

Terminal yard and trucking facility
Transient accommodations (TA-1)
Transient accommodations (TA-2)
Transient accommodations (TA-3)
Transient accommodations (TA-4)
Transient accommodations (TA-5)
Transient accommodations (TA-6)
Transient accommodations (TA-7)
Transient accommodations (TA-8)
Upholstery shop
Warehousing or storage facility
Wholesale business establishment
Wireless communications facility

§ 125-44 Town Hill Residential Corridor.

D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Agriculture, commercial
Campground
Cemetery
Multifamily dwelling II
Municipal school
Municipal facility and grounds
Place of worship
Road construction

Solar Photovoltaic (PV) System, Principal Use

Transient accommodations (TA-1)

Transient accommodations (TA-3)
Transient accommodations (TA-4)
Wireless communications facility

§ 125-45 Town Hill Residential.

D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Agriculture, commercial
Campground
Cemetery
Commercial stable
Employee living quarters
Marina
Mobile home park
Municipal facility and grounds
Municipal school
Place of worship
Road construction

Solar Photovoltaic (PV) System, Principal Use

Transient accommodations (TA-1)
Wireless communications facility

§ 125-46 Town Hill Rural.

D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Agriculture, commercial
Cemetery
Commercial boatyard
Commercial stable
Eleemosynary, educational or scientific institution
Kennel, boarding
Mineral extraction
Mineral extraction and processing
Municipal school
Place of worship
Road construction

Solar Photovoltaic (PV) System, Principal Use

Transient accommodations (TA-1)

Article V Site Plan Review

§ 125-67 General review standards.

The Planning Board, before granting site plan approval, must find that the proposed plan will comply with each of the following standards. In all instances the burden of proof shall be upon the applicant.

B. Lot standards.

(8) Exceptions to lot coverage.

- (a) In the required front setback, the footprint of driveways and sidewalks required for access to a site from a public or private road shall not constitute lot coverage, except in the Shoreland Districts. In the application of this standard, any footprint area of the portion of driveways larger than the minimum width required under § 125-67E(26) shall constitute lot coverage; and any footprint area of a sidewalk that exceeds four feet in width or is wider than that required under § 125-67G(3)(a) shall constitute lot coverage.
- (b) In the required setbacks, essential services shall not constitute lot coverage.
- (c) Solar photovoltaic system, principal use, located over live ground cover with sufficient space between the panels and above the ground to allow sunlight for vegetation to grow shall be exempt from lot coverage calculations due to sharing of the space. All other solar photovoltaic (PV) system, principal use, related amenities such as, but not limited to, roads, etc. are not exempt from lot coverage calculations. Live ground cover includes, but is not limited to, native perennial vegetation and foraging habitat beneficial to gamebirds, songbirds, and pollinators.

§ 125-69 Standards for particular uses, structures or activities.

Notwithstanding and in addition to any other provision of this chapter, before granting site plan approval for any land use activity described in this section, the Planning Board must find that the proposed plan will comply with such of the following standards as are applicable:

Z. Solar photovoltaic (PV) system, principal use.

The purpose of these regulations are primarily intended to allow for the construction and operation of larger-scale solar photovoltaic (PV) systems that produce energy for use on-site and/or off-site by establishing use-specific standards to ensure, to the greatest extent possible, that the project is sited and designed to maintain aesthetic quality, visual character, and compatibility with surrounding uses. These regulations do not apply to solar PV systems accessory to a permitted use or structure.

- (1) Safety.** Solar PV Systems shall be installed in compliance with the NFPA 70 National Electric Code and the NFPA 1 Uniform Fire Code as adopted by the town.
- (2) Fencing and Screening.** Perimeter fencing, installed around the boundary of the solar system, shall be elevated by a minimum of 5 inches off the ground to allow for passage of small animals. The fence shall contain appropriate warning signage posted in such a way that it is clearly visible on the site. Any portion of the fence visible from a road or abutter's property shall be screened.
- (3) Visual Impacts.** A solar PV system shall be sited on a lot in a manner that reduces the visual impacts of the installation to the greatest extent that is practical. The Planning Board may impose design-related conditions where findings of negative impacts on sensitive resources, as listed below, are made.

The applicant shall prepare a visual impact assessment to include a narrative and demonstration detailing the extent to which the proposed solar PV system would be visible from any designated scenic resource(s); Acadia National Park; archaeological and historic resources (specifically those listed in the National Register of Historic Places, or eligible for inclusion); and the distance to the proposed solar PV system from the designated resources and noted viewpoints.

Information to be submitted shall include:

- (a)** A photomontage, field mockup, or other technique(s) to identify the potential visual impacts, at design capacity, of the proposed facility on sensitive resources and adjacent properties.
- (b)** Photos showing existing site vegetation, structures, and land uses of the subject lot and abutting properties; views of the proposed solar PV system from sensitive resources and adjacent properties; and showing the topography of the subject lot and abutting properties.
- (c)** Landscaping, screening, and buffering plan showing location of proposed plantings, screening, and buffering and existing vegetation to be retained.
- (d)** Demonstration that the siting of the solar PV system has reduced the visual impact to the

extent practical by methods that may include, but are not limited to, the following:

- [1] Avoiding impacts to sensitive visual resources, as listed above;
- [2] Installing the solar PV system in such a way as to use natural topography to obscure the project;
- [3] Using material and colors that blend with the background; and
- [4] Retaining or planting vegetation to obscure views of the solar PV system.

(4) Financial capacity. Proof of financial capacity to build, maintain, and remove/decommission the solar PV system facility.

(5) Emergency and Operation/Maintenance Plans

The owner or operator shall provide:

- (a) A plan including but not limited to a project summary, electrical schematic, and site plan to the town's Police Chief and Fire Chief. All means of shutting down the solar PV system shall be clearly marked.
- (b) A 24-hour emergency contact name and phone number to respond to public safety inquiries throughout the life of the solar PV system.
- (c) A general maintenance schedule for the solar PV system including the replacement/removal of all major components during the lifespan of the facility.
- (d) A list of cleaning chemicals and solvents, which shall be low in volatile organic compounds, to be used during the operation or maintenance of the facility (including biodegradable products).
- (e) An Integrated Vegetation Management (IVM) Plan that promotes desirable, stable, low-growing plant communities such as, but not limited to, native perennial vegetation and foraging habitat beneficial to gamebirds, songbirds, and pollinators through the use of appropriate, environmentally sound, and cost-effective methods. The goal is to balance safe, reliable, cost-effective vegetation management to attain stable desired plant communities while minimizing risk to human health and the environment. The plan shall address the following:
 - [1] The type of existing and proposed plant communities.
 - [2] Describe the use of control mechanisms to manage unwanted vegetation and promote desirable plant communities short- and long-term, such as, but not limited to: biological control (grazing sheep, goats, and other animals); mechanical and manual control (mowing, cutting, grubbing, hand-pulling, and tilling); cultural control (introduction of specific plants or mulches); and chemical control (application of herbicides).
 - [3] Quinquennial reevaluation of the IVM plan to determine efficacy, and make adjustments necessary to improve the plan. The findings and proposed amendments to the IVM plan shall be submitted to the Code Enforcement Officer who shall review the plan per the above stated goal, request changes if needed, and accept the plan.

(6) Decommissioning Plan

In the event a solar PV system ceases to operate, or where construction begins but is not completed, the owner shall be responsible to restore the site according to the decommissioning plan approved by the Planning Board. The owner shall submit a decommissioning plan that ensures that the site will be restored to a useful life without delay.

The decommissioning plan shall include, but is not limited to, the following:

- (a) Provision for the notification to the Code Enforcement Officer by certified mail of the proposed date of the discontinued operations of the solar energy system facility and of the removal schedule.
- (b) Provision for the removal of the solar PV system no more than 365 days after the date of the discontinued operations of the facility.
- (c) Provision for the removal of aboveground and underground equipment and of structures and foundations to least three feet below grade. Underground equipment, structures and foundations that are at least three feet below grade and do not constitute a hazard or interfere with agricultural or other resource-based land use do not need to be removed.
- (d) Provision for the removal of graveled areas, access roads, fences, gates, etc., unless leaving it in place benefits an agricultural or other resource-based land use.
- (e) Provision for the restoration of the surface grade and soil after removal of aboveground structures and equipment.
- (f) Provision for the revegetation of restored soil area with, to the maximum extent possible, native pollinator-friendly seed mixtures and plant species suitable to the area.
- (g) Provisions for the protection of public health and safety, as well as for protection of the environment and natural resources during the site restoration.
- (h) Provisions for the disposal of all solid and hazardous waste in accordance with state and federal waste disposal regulations.
- (i) A schedule for completion of site restoration work.
- (j) An estimated cost to implement the decommissioning plan at the estimated date of decommissioning. The cost is to be determined by an independent registered professional engineer in the State of Maine, to be mutually acceptable by the owner and the Town. The engineer will be paid by the owner but hired by the Town. The cost to implement to the decommissioning plan shall be acceptable to the Town's Finance Director.
- (k) Provision of financial assurance of performance.

(7) Abandonment.

- (a) Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances to the Code Enforcement Officer, a solar PV system shall be considered abandoned when it fails to operate for more than 365 days.
- (b) If the owner of the solar PV system fails to remove the installation within 365 days of abandonment or the proposed date of decommission, the Town of Bar Harbor retains the right to use all available means to cause an abandoned or hazardous solar PV system to be decommissioned.

(8) Financial Assurance of Performance *[Need to make sure this works with Art. IX]*

- (a) At the time of approval, the owner of the solar PV system shall submit to the town a bond or other financial surety outlined in Article IX, Performance Guarantees, of the Land Use Ordinance, to be approved by the Town's Finance Director, for 110% of the estimated decommissioning of the facility based on the average life span of the solar PV system.
- (b) The bond or other financial surety shall be in effect for as long as the solar PV system facility is in place. The performance guarantee shall be used by the town to remove/decommission the abandoned solar PV system (or the use of which has ceased) and associated abandoned structures only if the owner has not done so within the required 365-day period. Financial assurance provisions must be noted in the Planning Board Decision and must be transferred with the development if it is sold.

Article XII Construction and Definitions

§ 125-109 Definitions.

The following terms shall have the following meanings:

Array:

Any number of electrically connected photovoltaic (PV) modules providing a single electrical output.

Photovoltaic (PV):

A semiconductor-based device that converts light directly into electricity.

Solar Photovoltaic (PV) System, Principal Use:

A solar collection system consisting of one or more ground-mounted solar photovoltaic cells, panels or arrays, and solar-related equipment that rely upon solar radiation as an energy source for collection, inversion, storage and/or distribution of solar energy for electricity generation. The ground-mounted solar collection system shall have a total surface area (all panels and/or arrays) greater than 20,000 square feet in size.

Solar Photovoltaic (PV) System, Accessory Use:

A solar collection system accessory to a permitted use or structure, consisting of one or more roof-mounted and/or ground-mounted solar photovoltaic cells, panels or arrays, and solar-related equipment that rely upon solar radiation as an energy source for collection, inversion, storage and/or distribution of solar energy for electricity generation. The ground-mounted solar collection system shall not exceed a total surface area (all panels and/or arrays) of 20,000 square feet in size.

Town of Bar Harbor
Proposed Regulations for Bonus Dwelling Units (BDU)

1. Purpose

These regulations are meant to allow and encourage the most efficient use of the existing housing stock while capitalizing on existing infrastructure such as roads, water, sewer, etc.

2. Consistency with Comprehensive Plan

Goal #6 – To encourage and promote decent and affordable housing opportunities and slow off-island migration.

3. Definition

DWELLING UNIT, BONUS (BDU)

A single self-contained dwelling unit which is part of, attached to, or located on the premises of a principal single-family dwelling unit. This dwelling unit consists of one or more rooms with separate kitchen and bathroom facilities.

4. Districts

BDU would be by CEO permit and allowed in the following districts (needs to be finalized)

	SEWER (in whole or in part)	Accessory Dwelling Unit (as presently defined and allowed in the LUO)	Bonus Dwelling Unit (as proposed)	
			Based on PB members responses	
§ 125-17 Bar Harbor Gateway	Y	N	Y	Y if there are SFs
§ 125-18 Village Historic	Y	N	N	Y
§ 125-19 Mount Desert Street Corridor District	Y	N	Y	Y if there are SFs
§ 125-20 Village Residential	Y	N	Y	Y
§ 125-21 Downtown Village I	Y	N	Y	Y
§ 125-21.1 Downtown Village II	Y	N	Y	Y
§ 125-21.2 Downtown Village Transitional	Y	N	Y	Y
§ 125-22 Downtown Residential	Y	Y	Y	Y
§ 125-23 Emery District	N	Y	Y	Y
§ 125-24 Hulls Cove Business	Y	Y	Y	Y
§ 125-26 Hulls Cove Residential Corridor	Y	Y	Y	Y
§ 125-27 Hulls Cove Rural	Y	Y	Y	Y
§ 125-28 Indian Point Residential	N	Y	Y	Y
§ 125-29 Indian Point Rural	N	Y	Y	Y
§ 125-30 Industrial	Y	N	N	Y
§ 125-31 Ireson Hill Corridor	Y	Y	Y	Y
§ 125-32 Ireson Hill Residential	Y	Y	Y	Y

	SEWER (in whole or in part)	Accessory Dwelling Unit (as presently defined and allowed in the LUO)	Bonus Dwelling Unit (as proposed) Based on PB members responses	
§ 125-33 McFarland Hill Residential	N	Y	Y	Y
§ 125-34 McFarland Hill Rural	N	Y	Y	Y
§ 125-35 Otter Creek	N	Y	Y	Y
§ 125-36 Resource Protection	N	N	N	N
§ 125-37 Salisbury Cove Corridor	N	Y	Y	Y
§ 125-38 Salisbury Cove Residential	N	Y	Y	Y
§ 125-39 Salisbury Cove Rural	N	Y	Y	Y
§ 125-40 Salisbury Cove Village	Y	Y	Y	Y
§ 125-41 Schooner Head	N	Y	Y	Y
§ 125-42 Scientific Research for Eleemosynary Purposes	Y	N	N	N
§ 125-43 Town Hill Business	N	Y	Y	Y
§ 125-44 Town Hill Residential Corridor	N	Y	Y	Y
§ 125-45 Town Hill Residential	N	Y	Y	Y
§ 125-46 Town Hill Rural	N	Y	Y	Y
§ 125-47 Shoreland General Development I	Y	Y	Y	Y
§ 125-48 Shoreland Limited Residential	Y	Y	Y	Y
§ 125-49 Shoreland General Development II (Hulls Cove)	Y	Y	Y	Y
§ 125-49.1 Shoreland General Development III	Y	N	N	Y if there are SFs
§ 125-49.2 Shoreland General Development IV	N	N	N	Y if there are SFs
§ 125-49.3 Shoreland Maritime Activities District	Y	N	N	N
§ 125-50 Stream Protection	Y	N	N	N?
§ 125-51 Marine Research	N	N	N	N?
§ 125-51.1 Educational Institution	Y	N	N	N?

5. Requirements/Standards for BDU

These additional standards, would be placed in §125-69 Standards for Particular Uses, Structures or Activities as §125-69 AA. –Bonus Dwelling Units.

(Note that Y is reserved for VR and Z for Solar)

- BDUs would be required to meet all requirements of the district(s) where they are proposed to be located but would be exempt from the area per family.
- Allow a maximum of one BDU per lot that is occupied by a principal single-family dwelling unit.
- A BDU would not be able to be registered as short-term rental or a vacation rental.
- The sale of the BDU separately from the principal single-family dwelling unit would be prohibited. For this to happen, we would amend § 125-56 F as follows:

A single parcel of land, the legal description or dimensions of which are recorded on a document or map on file at the Hancock County Registry of

Deeds, which lawfully existed immediately prior to the enactment of this chapter or any subsequent amendment and which, as a result of the enactment of this chapter or any amendment, does not meet the lot size, minimum area per family, road frontage, floor area ratio, lot coverage, shore frontage, or lot width requirements, or all seven, in the district in which it is located, and which does not adjoin another vacant parcel in common ownership, may be built upon without the need for a variance, but only subject to the following:

- F. If two or more principal uses or structures exist on a single lot of record, they may not be sold separately each may be sold on a separate lot provided that the State Minimum Lot Size Law (12 M.R.S.A. §§ 4807-A through 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules are complied with.

Related existing definitions in Chapter 125 for context

STRUCTURE, ACCESSORY

- A. A structure which is:
- (1) Subordinate to and serves a principal structure or a principal use;
 - (2) Subordinate in area, extent and purpose to the principal structure or use served;
 - (3) Located on the same lot as the principal structure or use served, except as otherwise expressly authorized by the provisions of this chapter; and
 - (4) Customarily incidental to the principal structure or use.
- B. Any portion of a principal structure devoted or intended to be devoted to an accessory use is not an accessory structure.

USE, ACCESSORY

- A. A use which is:
- (1) Subordinate to and serves a principal use;
 - (2) Subordinate in area, extent and purpose to the principal use served;
 - (3) Located on the same lot as the principal use served, except as otherwise expressly authorized by this chapter; and
 - (4) Customarily incidental to the principal use.
- B. An accessory use shall not include any use injurious or offensive to the neighborhood as initially determined by the Code Enforcement Officer.
- C. Allowed off-street parking shall always be considered a permitted accessory use when required or provided to serve a permitted use in any district.